

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

DANNY OVERTON CRUSE

PLAINTIFF

V.

Case No. 05-2128

SHERIFF REED HAYNES, MARGARET
LEWIS, JOSH ROSS, MATT HAMILTON,
JAILER JUSTIN PHILLIPS, CHRIS McCOY,
and MEDICAL DEPARTMENT

DEFENDANTS

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Danny Cruse brings this pro se civil rights action under 42 U.S.C. § 1983, alleging that his constitutional rights were violated while detained in the Franklin County Detention Center. The defendants have filed a motion to dismiss Justin Phillips as a defendant in this action. (Doc. 26). The plaintiff has filed no response to this motion to dismiss.

In their motion, defendants state that Justin Phillips is not currently and was at no time during the time period relevant to plaintiff's case in the employ of Franklin County. Instead, defendants contend that Justin Phillips is a law enforcement officer with the City of Ozark. As such, they request that plaintiff's claims against Justin Phillips be dismissed for failure to state facts upon which a claim of relief may be granted. Fed. R. Civ. P. 12(b)(6). Because plaintiff's cause of action arises from a claim against the Sheriff of Franklin County and others in his employ for failure to provide medical care, we agree.

Therefore, I recommend that defendants' motion (Doc. 26) to dismiss Justin Phillips as a defendant be GRANTED and this party be DISMISSED.

Notably, there are several other defendants named in this action, so the plaintiff will be able to pursue his claims against these defendants.

The parties have ten days from receipt of this report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely written objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 23rd day of October 2006.

/s/ Beverly Stites Jones
HON. BEVERLY STITES JONES
UNITED STATES MAGISTRATE JUDGE